

October 3, 2003

Ms. Marianne Lamont Horinko  
Environmental Protection Agency (1101A)  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

Re: Docket # OPP-2003-0314, FRL 7326-6  
OPPOSITION to California's Section 18 Crisis Exemption for the Use of Carbofuran

Dear Mr. Johnson:

We, the undersigned **37 groups**, representing more than 5 million individual American citizens, strongly oppose the use of flowable carbofuran (Furadan 4F) in California under a FIFRA Section 18 crisis exemption and the regulations at 40 C.F.R. §§166.40. Because EPA has not acted to prevent this use on up to 300,000 acres of cotton, we believe that the EPA is in violation of FIFRA, the Endangered Species Act, and the Migratory Bird Treaty Act in allowing this unregistered use for cotton. We urge the EPA to immediately end the use in California at least until EPA has conducted its required analyses to determine if the use may result in unreasonable adverse effects on the environment, whether the benefits outweigh such risks, whether there really is a crisis in California cotton negating use of two efficacious alternative chemicals for aphid control, and whether such use is consistent with all relevant laws, including FIFRA, ESA, and MBTA. The EPA is under a statutory duty to render such a decision PRIOR to any use of carbofuran in California.

We believe that there are obvious unreasonable adverse effects to the environment from such carbofuran use, that the benefits do not outweigh these risks, that a true crisis under Section 18 of FIFRA does not exist and has not been properly documented, that proven efficacious alternative chemicals for aphid control in California cotton are available, and that an EPA authorized use of flowable carbofuran in California would violate FIFRA, ESA, and the MBTA.

California has applied for FIFRA Section 18 emergency exemptions for cotton aphids in 1999, 2000, 2001, and 2002 and received an exemption every year from EPA. Now, California seeks a crisis exemption for 2003 and the EPA has allowed such use to begin by its inaction. FIFRA does not contemplate such repeated annual emergencies for the use of such a chemical as carbofuran. States have been using the Section 18 process as a simple method of circumventing the re-registration process to obtain a pesticide that is not warranted safe for use. The EPA is

joining in this circumvention by allowing Section 18's provisions to be abused, especially given the alternative, efficacious aphid control pesticides available.

In the Federal Register Notice published on May 21, 2003 for Docket OPP-2003-0167 (Receipt of Applications for Emergency Exemption, Solicitation of Public Comment) regarding Section 18 exemptions for carbofuran use in cotton for aphids by several states, the Federal Register notice stated that in regards to birds and wildlife the EPA “believes that the proposed use of flowable carbofuran on cotton could pose a risk similar to the risk assessed by EPA under the Special Review of granular carbofuran.” The vast amount of information available in the scientific literature relating to extreme toxicity of all formulations of carbofuran to wildlife supports that assumption. During EPA’s Special Review of Granular Carbofuran in the early 1990s, the U.S. Fish and Wildlife Service (FWS) sent a series of letters to the EPA urging the cancellation of all forms of carbofuran. This included a letter dated March 10, 1992 in which the FWS explicitly states **“the Agency (EPA) should exercise its responsibility under FIFRA by canceling all forms of carbofuran.”** Nothing has changed in the last eleven years to reduce the risk or change that opinion.

As you will recall, in June 2002, 55 conservation, environmental and animal welfare groups from across the country strongly opposed a Section 18 emergency exemption application for the use of granular carbofuran on 100,000 acres of rice in Louisiana based on the extreme toxicity of this product to birds and other wildlife. Over 5,000 citizens voiced their objections during an abbreviated public comment period. After evaluating that case and reviewing the documentation associated with the Special Review of granular carbofuran, EPA decided to revoke its Section 18 exemption for the Louisiana Department of Agriculture because EPA determined that an emergency program was no longer supported in the state and that the use of granular carbofuran may cause unreasonable adverse effects to the environment. EPA also cited the overwhelming public opposition to the permit. Based on the overwhelming amount of scientific evidence available, we believe that EPA made the right decision. Given that decision, EPA should do the right thing again, and therefore we strongly urge the EPA to immediately stop the California use of carbofuran and deny the Section 18 request for emergency use of flowable carbofuran.

EPA should not simply “look the other way” as California proceeds to spray carbofuran on cotton fields, jeopardizing human and animal health. We mention human health as EPA still has not established a tolerance level for cotton-gin trash in animal feed. FIFRA Sec. 408(l)(6) requires that EPA establish a tolerance level for pesticides permitted for use under Section 18 emergency exemptions. The EPA must under law render a safety finding under the Federal Food Drug and Cosmetic Act, Sec. 408 that “no harm will result from aggregate exposure to the pesticide chemical residue.” EPA’s OPP has found that gin trash does contain carbofuran residues and thus, a Section 18 exemption for California carbofuran use in cotton is contrary to law without an EPA established tolerance level.

EPA has been conducting a detailed review for years on the re-registration of carbofuran and has concluded that carbofuran presents a threat to ground and surface water. Drinking water concerns over carbofuran have not been resolved.

EPA's Special Review of carbofuran in 1991 (56 Fed. Reg. 64621) concluded that granular carbofuran posed unreasonable adverse risks to birds. Based on that risk assessment EPA drew several conclusions regarding carbofuran including 1) that carbofuran is highly toxic to birds, 2) predatory and scavenging birds can be secondarily poisoned when they ingest organisms that were exposed to carbofuran, 3) many birds have been killed by "proper use" of carbofuran (documented by field studies and over 80 separate poisoning incidents), 4) carbofuran presents a greater risk to birds than alternative chemical control methods, and 5) there are no demonstrated conditions under which granular carbofuran can be used without presenting unreasonable risk. These findings from the Special Review are directly relevant to the present emergency exemption request for flowable carbofuran.

A review of current scientific literature indicates that, regardless of its formulation, carbofuran is extremely toxic to birds. In addition, the EPA has documented in its review as has the U.S. FWS that carbofuran is extremely acutely toxic to avian species and is a known eagle killer. We are well aware of the EPA risk assessment that concludes that for birds that are most susceptible to carbofuran (about 10% of avian species), about 45% of all these birds that may be feeding in carbofuran treated fields would be expected to die.

We also are concerned over the failure of EPA after many years to complete ESA Section 7 consultation with the FWS on carbofuran. The draft FWS biological opinion found jeopardy for a number of listed species based on carbofuran's use. California's state bulletin program mentioned as meeting ESA requirements by EPA officials is clearly not sufficient and does not meet FWS Biological Opinion requirements.

We have reviewed a copy of the California Department of Pesticide Regulation Section 18 crisis exemption request filed with EPA. Their application clearly does not substantiate a crisis in California cotton, much like the Louisiana case last year. Where is the data substantiating the failure of the two proven efficacious carbofuran alternative pesticides? Where is the scientifically sound substantiation of California's Pesticide Regulation Department claims of a crisis? There simply is no valid data that has been submitted to document the failure of the alternative pesticides. Simply submitting a statement based on some field observations cannot support such an extraordinary exemption as in this case.

Rather than using safer, less toxic, equally effective alternatives cotton growers want to use carbofuran because it is a "cheap and easy" fix. EPA and the states know that there is no justification under Section 18 for the use of carbofuran on cotton. California is simply using the crisis exemption process as a loophole. By allowing California to use this exemption EPA is setting a dangerous precedent for other states to follow.

Rather than repeat thorough documentation of the unreasonable adverse effects on the environment caused by carbofuran, we refer you to our June 28, 2002 letter to the EPA on the use of granular carbofuran on 2,500 acres of rice fields in Louisiana and our letter of June 12, 2003 regarding the granting of an emergency exemption for the use of flowable carbofuran on up to 3.4 million acres of cotton in Texas, Louisiana, Oklahoma and Arkansas.

Based on the above information, it is impossible for EPA to conclude that “[t]he use of the pesticide under the exemption will not cause unreasonable adverse effects on the environment.” 40 C.F.R. § 166.25(b)(1)(ii). Approving this emergency exemption request would violate FIFRA, EPA’s regulations, the ESA, and the MBTA. We request that the use of carbofuran in California be ended immediately and that EPA act to deny and revoke the Section 18 crisis exemption California requests.

Respectfully,

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